

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:18 CR 893 RWS-2
	)	
JASON DANIEL FREEMAN,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

The Court referred this matter to United States Magistrate Judge Patricia L. Cohen for a report and recommendation on pending motions pursuant to 28 U.S.C. § 636(b). On August 26, 2021, Judge Cohen filed her Report and Recommendation that defendant's motion to dismiss based on vindictive prosecution and double jeopardy [184] should be denied as untimely and meritless. [240].

Defendant objects to the Report and Recommendation [247], arguing his motion was timely and, as to the merits, raising largely the raising the same arguments made in front of Judge Cohen. This Court has conducted a de novo review of all matters relative to defendant's motion and objections, including a review of the transcript of the evidentiary hearing held in person, at defendant's

insistence, on April 13, 2021. [218]. After careful consideration, I will adopt and sustain Judge Cohen's Report and Recommendation to the extent it recommends denying the motion as meritless. However, I agree with defendant that his motion, which bears the postmark date of November 21, 2020 (Doc. 184 at 18), should be considered timely filed and I therefore decline to adopt that portion of Judge Cohen's Report and Recommendation which concludes that defendant's motion is untimely.

Judge Cohen went on to determine that, even if timely filed, the motion should be denied as meritless. Her findings on this issue will be adopted for the reasons set out in the Report and Recommendation. Judge Cohen correctly determined that defendant failed to meet his heavy burden of establishing prosecutorial vindictiveness. There is no evidence that the superseding indictment was filed to punish defendant for filing pretrial motions or for declining to plead guilty and proceed to trial. Statements by the Assistant United States Attorney that defendant may be subject to a longer sentence or additional charges by choosing to go to trial rather than plead guilty are not evidence of prosecutorial vindictiveness for the reasons set out in the Report and Recommendation. Moreover, Judge Cohen correctly determined that defendant failed to meet his heavy burden of demonstrating that plaintiff engaged in impermissible selective

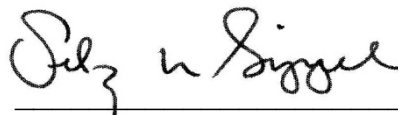
prosecution. Defendant does not specifically object to Judge Cohen's determination that defendant's double jeopardy argument should be denied as meritless, and the Court concludes that defendant's double jeopardy argument fails for the reasons set out in the Report and Recommendation. Finally, Judge Cohen correctly determined that defendant did not demonstrate a violation of either Fed. R. Crim P. 48(b) or 18 U.S.C. § 3161(b).

Accordingly,

**IT IS HEREBY ORDERED** that the Report and Recommendation filed on August 26, 2021 [240] is adopted and sustained only to the extent it concludes that the motion to dismiss should be denied as meritless.

**IT IS FURTHER ORDERED** that defendant's objections to the Report and Recommendation [247] are sustained only as to the issue of the timeliness of defendant's motion, and are otherwise overruled as to the merits of the motion.

**IT IS FURTHER ORDERED** that defendant's motion to dismiss for selective and vindictive prosecution and double jeopardy [184] is denied.



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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 12th day of October, 2021.